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FINRA ends COVID-19 relief and adopts new residential supervisory location rule on remote work

The Financial Industry Regulatory Authority (FINRA) has announced the adoption of two related rules—Rule 3110.18 and 3110.19—which marks the end to the COVID-19 temporary relief from certain regulatory obligations and ushers in a new understanding of the ever-evolving work environment.[1] These rules impose additional supervisory obligations requiring member firms (Firms) to include an associated person's private residence as a supervisory location and inspect the residence. Eligible Firms can participate in a voluntary Remote Inspection Pilot Program.

Insights you should know

End of Notice 20-08 regulatory relief and updated filings: Starting June 1, 2024, Firms must resume those obligations that were previously afforded temporary relief (e.g., remote offices or telework arrangements).[2] FINRA provided explicit guidance that firms must evaluate and update regulatory filings that were previously unchanged during the pandemic. Specifically, Firms must ensure that disclosed information remains current on forms U4 and BR, with any amendments filed with FINRA within 30 days. Effective July 1, 2024, both Form U4 and BR must reflect the current registration and address information for each office or location.

New designation for private residences as non-branch locations: To address evolving changes to the workplace, FINRA has adopted Rule 3110.19 that will now allow in specific situations for a private residence, where an associated person engages in allowable supervisory activities, to be registered as a non-branch location or newly designated residential supervisory location (RSL). These RSL locations will be subject to certain controls and limitations, including eligibility standards, inspections on a consistent periodic basis (presumed to be at least every three years), and additional reporting requirements through Gateway.

New Remote Inspection Pilot Program: FINRA Rule 3110.18 establishes a voluntary, three-year remote inspection pilot program (Pilot Program) to allow eligible Firms to fulfill their Rule 3110(c)(1) internal inspection obligation of qualified branch offices and non-branch locations remotely, without a required on-site visit, subject to specified submission and reporting requirements.

- **Opt-in notice:** Firms can elect to participate in the Pilot Program by submitting an 'opt-in notice' through FINRA Gateway between June 1 – 26, 2024; Firms can 'opt-out' of the second year by providing notice by December 27, 2024.
- **Restrictions and ineligibility:** Firms may be ineligible to conduct remote inspections if at any time during the pilot year the member has been designed as a Restricted or Taping Firm, suspended by FINRA, received notice regarding non-compliance with Rule 4110, 4130, or 4130, a newly approved broker-dealer, or found to have previously violated Rule 3110(c). Additional limitations must be considered if an individual is subject to heightened supervision, statutory disqualified, subject to Rule 1017(a)(7), has made certain disclosures related to disciplinary actions on Form U4. Firm may be limited if any person at the office or location is involved in proprietary trading, or the office handles customer funds or securities.

[1] FINRA, "Regulatory Notice 24-02," January 23, 2024.
[2] FINRA, "Regulatory Notice 20-08," March 09, 2020.

Considerations to evaluate

Evaluate permissible remote and hybrid work: Firms should first **evaluate the overall permissibility for groups or individuals to conduct supervisory** processes through remote or hybrid work locations and document the rationale behind these decisions. Afterward, firms should **evaluate whether that changes their business operations** as approved in their membership agreement. In certain instances, Firms may also want to **request a materiality consultation** with FINRA.

Conduct a risk assessment: As a requirement to use the RSL designation, Firms must **conduct and document a risk assessment** and maintain appropriate supervision over associated persons activities at their RSL. As part of the risk assessment, Firms will leverage existing branch audit frameworks that are customized to the activities that are conducted at each location.

Assess technology preparedness and enhancements: Firms should **assess whether their existing technology can handle the increased inspection volumes** and the ability to manage remote inspections. This could include tracking the supervisory personnel that are approved to work remotely, managing inspection schedules across these employees, documenting findings and results of inspections, managing remote work attestations, and identifying trends and training opportunities across multiple inspections.

Develop inspection criteria: Firms should be prepared to provide regulators with their **inspection criteria based on the risk assessment and the risks associated with supervisory personnel working remotely.** This may be documented within written supervisory procedures as well as within inspection modules and procedures. Inspection areas may include enhanced surveillance of print materials, clean desk requirements, and conflicts of interest. Assess whether your firm has the resourcing required to perform the inspections.

Evaluation of locations and offices against the ineligibility criteria: If Firms opt into the Pilot Program, they should **evaluate each non-branch location and office against the ineligibility criteria** to identify ineligible non-branch locations or employees that are ineligible for remote supervision. Firms should also consider **updating their supervisory framework**, including updating processes for heightened supervision reviews and registrations updates to quickly identify when supervisory personnel become ineligible for remote inspections.

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